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Before the

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
MCI COMMUNICATIONS CORPORATION	)	RM-9108
	)	
Petition for Rule Making re	)	
Billing and Collection Services	)	
Provided by Local Exchange Carriers	)	
for Non-Subscribed Interexchange Services	)	

TO: The Commission

REPLY

Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, hereby files its Reply Comments in the above-captioned proceeding initiated by MCI Communications Corp.'s ("MCI") Petition for Rule Making ("Petition").[1] Pilgrim's initial Comments supported MCI's request that the Commission adopt safeguards to ensure that incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") provide billing and collection for interexchange carriers ("IXCs") and enhanced service providers ("ESPs").

I. INITIAL MATTERS

Of all the comments filed, only the large ILECs with significant local historical monopolies opposed MCI's Petition. Opposition of Ameritech; Comments of Cincinnati Bell Telephone Company ("CBT"); Comments of the Southern New England Telephone Company ("SNET"); Bell Atlantic and NYNEX Comments ("BA/NYNEX"); Opposition of SBC Communications, Inc. ("SBC"); Comments of BellSouth Corporation ("BellSouth"); Opposition of US West, Inc. ("US West").[2] No other participant, coalition or association in

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1. Pursuant to the Public Notice, which established August 14, 1997, as the date by which interested parties must file reply, these Reply Comments are timely filed.

2. The almost uniform split in the filings indicates that there may be industry-wide collusion that could have anti-trust implications. Pilgrim requests that the Commission consider investigating the possibility of ILEC collusion in the restriction of billing and collection services.

the industry opposed the Petition. This fact alone should indicate to the Commission the scope and nature of the competitive roadblocks MCI cites in its Petition. More telling, perhaps, is the fact that even Frontier, who while an ILEC, is more significantly a participant in the provision of competitive services needing ILEC billing and collection, supports this petition. Of the commenting parties, even this sophisticated ILEC realizes the substantial burden faced by any other party attempting to either compete against the ILECs or provide casual access competitive services without ILEC billing and collection.

Pilgrim also notes that payment for service is not the principal issue in the proposed proceeding, only the non-discriminatory provision of service is at issue. IXCs and ESPs will be paying for ILEC-provided billing and collection, just as they have always paid for these services. The obligation to pay for billing and collection under reasonable rates and terms is not challenged, and the ILECs will not incur any direct financial costs that are not wholly and directly recoverable. IXCs and ESPs purchase billing and collection services from the LECs, regardless of cost, because there is no realistic alternative to LEC billing and collection service. The relative absence of the financial issue makes even more apparent, therefore, that ILEC opposition to providing billing and collection to IXCs and ESPs has no pecuniary basis except that refusal (or doing so only under clearly anti-competitive terms) confers an unfair competitive advantage on the ILECs.[3] There can be no other explanation.

As indicated by the MCI Petition, and in Pilgrim's initial Comments, the Commission's prior determination that billing and collection services are competitively available was not well-founded. Pilgrim Comments at 6-8. This fact has been recognized in public forums held by the Commission, and is admitted by competitors in the marketplace

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3. The ILECs' position is particularly suspect given the overwhelming number of complaints regarding ILEC unwillingness to provide the same level of access to OSS as they provide themselves. Instant access to BNA is among the OSS information not being provided on a basis which would permit third party billing and collection.

that have had years to develop, unsuccessfully, their own systems. Moreover, both the 1996 Act and the Commission's regulations derived therefrom, as well as the court decisions construing them, including, *inter alia*, *Iowa Util. Bd. v. FCC*, ___ F.3d ____ , No. 96-3321, (8th Cir. 1997), have created an entirely new regulatory environment for telecommunications. *Accord*, Comments of Competitive Telecommunications Association at 8. Even if the ILECs cannot accept this new reality, SNET Comments at 5 ("Noting has changed since the Detariffing and BNA Orders"), the ILECs' exhortations that the Commission has already decided all the billing and collection issues raised by the Petition, *see, e.g.*, SBC Comments at 11-14; CBT Comments at 5; SNET Comments at 1-2; BA/NYNEX Comments at 3 (each *citing Detariffing of Billing and Collection Services*, 102 FCC.2d 1150, *recon. denied*, 1 FCC Rcd 445 (1986) ("*B&C Order*"), *Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115 (2nd R&O), 8 FCC Rcd 4478 (1993) ("*BNA Order*"), or both), must therefore fall on deaf ears.[4]

The ILECs' admonitions that MCI should seek remedies for the competitive ills cited in the Petition through individual complaint proceedings, *see, e.g.*, BA/NYNEX Comments at 2, are without merit. MCI's problem is not with just one ILEC, nor do such problems

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4. Recitations that AT&T has developed the ability to provide billing and collection for itself, are both irrelevant and a false portrayal of AT&T's position. AT&T's problems with initiating its own billing and collection services are well-documented. *See* Pilgrim Comments at 4-5; AT&T Comments at 2-3; Competitive Telecommunications Association Comments at 4. Even if AT&T were to have a comprehensive, well-functioning billing and collection system for all of its services, including casual calling services, this would prove nothing. AT&T was part of the original Bell System before its dismantling, and of all competitors is the best placed to have a billing and collection system. The fact is that neither AT&T nor any other non-ILEC has been able to successfully build a billing and collection factory for casual access services due to the insurmountable obstacles, and ILEC stranglehold on all of the information necessary to create a billing and collection factory, including BNA. No party has been able to cite the existence of an independent billing and collection system.

affect solely MCI. Virtually every supporting commenter reported facing the same take-it-or-leave-it ILEC "negotiation" tactics or threats of cessation of billing and collection cited by MCI in the Petition.[5] It is wholly apparent that the LEC behavior complained of occurs throughout the industry and that its effects are felt throughout the entire telecommunications market. As such, initiating a rule making proceeding to address the market ills cited by MCI is wholly appropriate and is, in fact, the best mechanism for righting the market dysfunctions the LECs create by their stance on billing and collection.

Pilgrim also notes that most ILEC billing and collection contracts are provided under "proprietary" stamps that may shroud ILEC activities in secrecy. Most of these provisions contain exceptions for information specifically requested by a regulatory agency. The Commission should direct all commenting parties to supply all relevant information for consideration in order to obtain a complete picture of the problems faced in the industry. Specific direction in this regard will permit parties to provide all relevant information with the security that doing so would fall within this standard exemption. Without such direction, many parties may be reticent to provide important documentation for fear of retaliation.

II. THE COMMISSION SHOULD ISSUE AN NPRM LOOKING TOWARD ADOPTION OF PERMANENT RATHER THAN TEMPORARY RULES

In its initial Comments, Pilgrim advocated that any notice of proposed rule making issued in response to MCI's Petition be directed toward adoption of permanent regulations rather than the temporary rules sought by MCI. Pilgrim Comments at 6-8. Therefore, from

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5. It is interesting -- and beyond credibility -- that each of the ILECs claims not to be the one that MCI and the supporting commenters are referring to when cataloging ILEC take-it-or-leave-it negotiating tactics or threats to cut off billing and collection. It is even more incredible that US West characterizes such tactics as "give-and-take" negotiations. US West Opposition at 5. Given the nearly uniform IXC and ESP agreement regarding the prominence of take-it-or-leave-it ILEC stances and their insistence on patently unreasonable terms and conditions, there can be no doubt that at least some of the ILECs are guilty of such conduct, and that such conduct is widespread. The Commission must take this opportunity to investigate these actions on an industry-wide basis, and take corrective action.

Pilgrim's perspective, ILEC challenges to the Petition based on the disingenuousness of MCI calling for only "temporary" rules, US West Opposition at 5-7; BellSouth Comments at 2; Ameritech Opposition at 4, are completely irrelevant. The ILECs have demonstrated, and the comments filed in support of the Petition have shown, that ILECs are simply unwilling to offer the nondiscriminatory access to billing and collection functions contemplated by the Act and necessary to a properly functioning, competitive market for telecommunications services. When the Commission adopts rules, those rules are not written in stone, and the Commission has the duty to, and does, revisit its rules and revise them as necessary. 47 U.S.C. § 161. In that sense, all of the Commission's rules are "temporary," that is, in force until no longer needed. As such, any rule adopted by the Commission in a rule making proceeding arising from MCI's Petition should be as "permanent" as any other Commission rule and kept on the books until it is no longer needed, and the ILECs' chastisement of MCI for "disingenuously" suggesting that it seeks only "temporary" rules should be seen as the red herring it is.

III. ANY PROCEEDING ARISING FROM MCI'S PETITION SHOULD ENCOMPASS NONDISCRIMINATORY BILLING AND COLLECTION FOR ALL CASUAL ACCESS SERVICES

LECs, IXCs and ESPs all provide casual access services.[6] The 1996 Act clearly contemplated that the provision of these services take place in a wholly competitive environment where market participants would rise and fall based only on the merits of the services they chose to offer their customers or potential customers. LECs, however, have an advantage that non-LECs simply cannot duplicate on their own -- the ability to bill for POTS and casual access services on a single, unified bill.

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6. Casual access services include 1+, 0+, collect calling, calling card calling, CLASS services, *-code, enhanced directory assistance, telemessaging, teleconferencing, time, N11 calling, weather, pay-per-call services, Internet services, and any other information and enhanced services.

The comments filed in this proceeding clearly reflect the consumer preference for such billing and collection. *See, e.g.*, Comments of Consolidated Communications Telecom Services, Inc. at 8 ("Consolidated").[7] This preference is constantly reinforced in advertisements run by the ILECs that Pilgrim is prepared to file with the Commission should it institute a rule making proceeding. In the absence of the Commission adopting regulations to compel LECs to provide billing and collection on a nondiscriminatory basis to all who require it, IXCs and ESPs will quite simply never be able to provide their customers with a single, unified bill. Their ability to compete in the marketplace, therefore, will be significantly constrained.

The ILECs recognize that customers prefer one bill and can use that to their competitive advantage, particularly to the extent that ILECs will soon compete directly with IXCs and already do so with regard to ESPs. Such an unequal playing field is clearly not what Congress had in mind when it adopted the 1996 Act. *See, e.g., Telephone Number Portability*, CC Docket 95-116 (1st R&O), 11 FCC Rcd 8352 at ¶ 110 (1996) (*citing* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (statement of Act's purpose)). The only way to level the playing field, then, is for the Commission to institute the requested rule making proceeding.[8] In the alternative, LECs could be prohibited from using their "unified bill" to bill their competitive services and instead be required to issue a separate bill for all non-basic services.

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7. Moreover, the economics of this advantage are clearly and succinctly set forth by AT&T in its Comments. AT&T Comments at 3.

8. Some ILECs hold up the availability of BNA pursuant to tariff to demonstrate that rules are not necessary to remedy MCI's complaints. *See, e.g.*, Opposition of SBC at 11; Opposition of Ameritech at 5; Comments of SNET at 4; Comments of BA/NYNEX at 4. Such references are non-responsive, however, given that BNA is not available for up to 35% of phones to which IXCs, ESPs and others need to bill. *See* Pilgrim Comments at 4; Comments of Hold Billing Services, Ltd., at 4 ("HBC").

More importantly, it will be necessary for the Commission to extend the applicability of all rules and non-discriminatory access provisions to all casual access services. Due to the ability to provide local dial tone, the ILECs have additional capabilities to provide competitive casual access services in manners that the IXCs and ESPs cannot. Only by applying the billing and collection rules to all services can the Commission ensure proper protection under any rules.

IV. THE COMMENTS DEMONSTRATE THAT BILLING AND COLLECTION SERVICES ARE ESSENTIAL FACILITIES WHICH MUST BE PROVIDED ON A NONDISCRIMINATORY BASIS

In its initial Comments, Pilgrim showed that billing and collection services are "essential facilities" and that the essential facilities doctrine requires nondiscriminatory LEC provision of billing and collection services. Pilgrim Comments at 3-6 and cases cited therein. The comments filed in this proceeding, both in support of MCI's Petition and in opposition, bolster Pilgrim's assertion that LEC-provided billing and collection is an essential facility. First, LECs are clearly monopolists in the context of billing and collection. As noted above, for at least 35% of the phones which IXCs and ESPs may need to bill for casual access services, the ILECs are the only entity with billing and collection information. In addition, as also noted above, only LECs have the capacity to tender single, unified bills for telecommunications services to end users. They are clearly monopolists, and the comments filed in this proceeding reflect that fact.

Second, it is not feasible for IXCs and ESPs to duplicate LEC billing and collection functions, despite ILEC suggestions to the contrary. *See, e.g.*, SBC Opposition at 17; US West Opposition at 17, SNET Comments at 4; AT&T Comments at 2-3. No feasible alternative to LEC-provided billing and collection can exist due to the fact that such efforts are not in any way competitively reasonable given the market dysfunctions that would result. IXCs and ESPs cannot reach over one-third (approximately 35%) of their potential customers

without LEC billing and collection. Nor can IXCs and ESPs provide the unified POTS and casual access service billing preferred by customers given that POTS billing is the mechanism which drives all other billing, and IXCs and ESPs do not offer POTS service.

Third, given the opportunity, ILECs have denied or effectively denied access to billing and collection services. The comments in this proceeding are rife with anecdotal evidence that LECs are engaging in take-it-or-leave-it "negotiation," threatening to summarily terminate billing and collection services, and demanding inappropriate information attendant to executing billing and collection agreements. *See, e.g.*, Comments of OAN Services, Inc., and Integretel, Inc., at 2-3, 8; Telecommunications Resellers Association at 2; Comments of HBC at 3; Comments of Sprint at 3-4; Comments of Excel Communications, Inc. at 13; Pilgrim Comments at 8.

Finally, ILECs are fully capable of providing billing and collection for IXCs and ESPs. Nowhere in the ILECs' comments is it suggested that they are incapable of providing the relief sought by MCI, only that they are unwilling to do so unless the Commission explicitly requires it. In fact, the LECs have historically provided this as required under the Modified Final Judgment (MFJ).

Given that the provision of billing and collection is an essential facility, LECs must provide billing and collection on a nondiscriminatory basis. *See, e.g., City of College Station v. City of Bryan*, 932 F.Supp. 877, 887 (S.D. Tex. 1996) (*citing, inter alia, MCI Communications v. AT&T*, 708 F.2d 1081, 1133 (7th Cir.), *cert. denied*, 464 U.S. 891 (1983). Such nondiscriminatory provision comports with the both the 1996 Act and the 8th Circuit's recent *Iowa Utilities* decision. Moreover, because billing and collection is an essential facility, the distinction as to whether the billing and collection function is a "common carrier" or "financial and administrative" service raised by the ILECS, *see, e.g.*, Opposition of Ameritech at 2; Comments of CBT at 4-5; Comments of BellSouth at 2, is not

at all dispositive -- essential facilities analysis applies regardless of whether the facility or service in question is a common carrier.

V. PROTECTION REQUIRED IN THE ABSENCE OF THE MFJ

The necessity of this proceeding is also apparent from the fact that the MFJ used to provide non-discriminatory access protection to IXCs for billing and collection. So long as the Bell Operating Companies were providing billing and collection to AT&T, they had to provide it to all others. Although this provision was not enforceable by any other party, it still provided for valuable protection for this essential service. The 1996 Act has removed the protection accorded by the MFJ and provided all IXCs and ESPs with stronger protection, which protection is now actionable by anyone harmed by any anti-competitive ILEC practice. The Commission will have an opportunity to fully investigate the intent of Congress, the scope of protection provided, and the best way to ensure the extension of this protection to all IXCs and ESPs by undertaking this rule making.

When Congress eliminated the protections of the MFJ for a variety of access and OSS functions (billing and collections among them), it is beyond credibility that it intended exclude billing and collections from the new and expanded protections of the 1996 Act. It is clear that Congress intended the new protections of the 1996 Act to substitute for and expand upon the protections of the MFJ with respect to all access and OSS functions, including billing and collections services. Should the Commission fail to enforce the protections of the 1996 Act as now requested, some LECs might be tempted to interpret that decision as authority to continue and expand discriminatory practices previously prohibited under the MFJ. That signal, if sent, and the resulting ILEC self-dealing, could be a devastating blow to the entire casual calling industry.

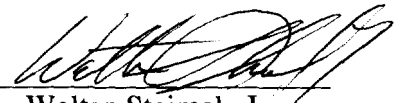
VI. CONCLUSION

Given the overwhelming support provided by the Comments for initiating the rule

making requested by MCI, and the wholesale substantiation of the competitive ills cited by MCI in the Petition, there is more than ample evidence that initiating the requested rule making is warranted. In light thereof, Pilgrim renews its call for Commission initiation of the rule making requested by MCI. Pilgrim also advocates that the Commission direct the rule making proceeding toward the adoption of permanent rather than temporary rules and that the Commission structure the rules adopted in the proceeding, whether permanent or temporary, expansively so as to include all casual access services.

Respectfully submitted,

PILGRIM TELEPHONE, INC.

By: 

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